

13902

No. _____

Supreme Court of Illinois

Ryan

vs.

Vanlandingham.

Pleas before the Honorable William
S. Stuart, Samuel B. Bookin, Samuel
C. Perkins, Andrew Davison, Judges of
the Supreme Court of the State of Indiana
held at the State House in the City of Indian-
apolis, on the twenty sixth day of May in the
year of our Lord, one thousand eight hundred
and fifty six.

Cheney Ryan } Appeal from the
Oliver H. Vanlandingham } Vanderburgh
Circuit Court

Be it remembered that on the 13th day of
July, 1853, the said Appellant by his Attorney
filed in the Clerk's Office of the Supreme
Court the Transcript of the Record of the
proceedings, of the Circuit Court of Vander-
burgh County, in the above entitled cause,
in the words following to wit;

State of Indiana }
Vanderburgh Co } D. D.

Vanderburgh Circuit Court
April Term A. D. 1853

This case began and held at the Court House in Evansville on the third Monday in April A. D. 1853, before the Honorable Alvin P. Hovey judge for the third judicial District in the State of Indiana.

Be it remembered that on the 25th of April 1853 Spencer B. Ryan filed in the Vanderburgh Circuit Court his amended complaint, which amended complaint, and the exhibits therewith filed are in the words and figures following to wit:

Amended
Complaint

State of Indiana }
Vanderburgh County } In the Vanderburgh
Circuit Court April Term A. D. 1853

Spencer B. Ryan }
Against }
Oliver C. Vanlandingham }

Spencer B. Ryan Plaintiff in this
suit complains of Oliver C. Vanlandingham Defendant
in this suit and says;

That the legislative Council and House of Representatives of the Illinois Territory by an Act approved

on the 28th day of December 1818 entitled "An Act to incorporate the President, Directors and Company of the Bank of Illinois did incorporate a Banking institution, and under the name and style of the President, Directors and Company of the Bank of Illinois, as will more fully appear, by a copy of said Act herewith filed, marked Exhibit No 1 and prayed to be taken as a part of this complaint: And the Plaintiff further says that the said Bank or Banking institution, mentioned in said Act, was after the passage of said Act, organized and put into operation, under and in pursuance of the provisions of said Act, and that the General Assembly of the State of Illinois, by an Act approved February 12th 1835 entitled "a Bill for an Act to extend for a limited time, the Charter of the Bank of Illinois at Shawneetown continued in force, the said first mentioned Act for the term of twenty years, from the first day of January 1837 as will more fully appear by a copy of said Act of February 12th 1835 herewith filed, marked Exhibit No 2, and prayed to be taken as a part of this complaint:—

And the Plaintiff further says that after the passage of said last mentioned Act, and during the existence of said Bank, the said Defendant, by his promissory note bearing date the 5th day of March 1841, and then executed and delivered by him in the State of Illinois promised to pay to the President, Directors and Company of the Bank

of Illinois two thousand dollars six months after the date of said note with interest at the rate of eight per centum per annum from due till paid, as will more fully appear by a copy of said note, herewith filed, marked Exhibit "B" and prayed to be taken as a part of this complaint.

And the Plaintiff also says that the said Defendant on the 5th day of May A.D. 1841 at and in the State of Illinois, made and delivered to the said Bank his other promissory note of that date, and thereby promised to pay six months after the date thereof, to the President, Directors and Company, of the Bank of Illinois, the farther sum of \$2000 with interest at the rate of six per centum per annum from due until paid, as will more fully appear, by a copy of said last mentioned note, herewith filed, marked "Exhibit" "C" and prayed to be taken as a part of this complaint.

And the Plaintiff further says that by an Act of the General Assembly of the State of Illinois, approved on the 25th day of February 1843 entitled "An Act to reduce the public debt one million of dollars, and to put the Bank of Illinois into liquidation" provision was made for putting said Bank into liquidation, as will more fully appear by said Act a copy of which is herewith filed marked Exhibit No 3 and is prayed to be taken as a part of this complaint.

And the Plaintiff further says that by an Act of the General Assembly of the State of Illinois approved on

the 28th day of February A.D. 1845, entitled "An Act supplemental to an Act to reduce the public debt one million of dollars and to put the Bank of Illinois into liquidation", provision was made for the assignment of the property and effects of said Bank to the Plaintiff, and the other persons mentioned, in the third section of said Act, as will more fully appear, by a copy of said Act herewith filed marked Exhibit "C" and prayed to be taken as a part of this complaint; and the said Plaintiff further says, that at the time of the passage of said, last mentioned Act, and at the time of the execution of the assignment, made in pursuance thereof as hereinafter stated, the aforesaid two promissory notes were held by and due to said Bank at Shawneetown, and that the President, Directors and Company of the Bank of Illinois aforesaid, on the 19th day of March A.D. 1845, by an order then duly made, and entered on the books of said corporation accepted the terms and provisions of said last mentioned Act and authorized and directed the President and Cashier of said Bank, within thirty days thereafter to assign, under the corporate seal of said Bank all its effects, real and personal, of every kind and description to assignees, according to the terms, provisions and instructions of said Act, as will more fully appear, by a copy of said resolution of acceptance herewith filed, marked Exhibit "D" and prayed to be taken as a part of this complaint.

And the said Plaintiff further says that in pursuance of

said last mentioned Act, and of said order of acceptance the President, Directors and Company of the Bank of Illinois by their President and Cashier at and in the State of Illinois, did on the 10th day of April 1845 by their deed of assignment of that date signed by the said President and Cashier, and sealed with the corporate seal of "The President, Directors and Company of the Bank of Illinois" transfer and assign, unto the Plaintiff and to one Albert B. Caldwell (who is mentioned in the third section of said Act) all the personal estates, rights and credits, notes, bonds, judgments and debts of every kind due to said Bank at Shawneetown and to the Branch of said Bank at Lawrenceville to have and to hold the said effects so assigned to the said Caldwell, and the Plaintiff, and to the survivor of them, as will more fully appear by a copy of said deed of assignment, herewith filed marked Exhibit "C" and prayed to be taken as a part of this complaint. And the said Plaintiff also says that the President, Directors and Company of the Bank of Illinois aforesaid, at the time of the execution of said assignment, delivered the said two promissory notes to the said Caldwell and the Plaintiff as the assignees thereof.

And the Plaintiff further says that after the execution of said assignment, the General Assembly of the State of Illinois passed another Act approved on the 10th day of February A.D. 1849 entitled "An Act for the relief of the assignees of the Bank of Illinois, and to extend the time for the liquidation

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of the affairs of said Bank, a copy of which last mentioned act is herewith filed marked Exhibit "F" and is prayed to be taken as a part of this complaint and that after the passage of the last named act and before the commencement of this action, the said Caldwell departed this life, in said State of Illinois.

And the Plaintiff further says, that at the time of the execution of the said deed of assignment, the first section of Article IX of the Revised Statutes of the State of Illinois adopted by the General Assembly of said State at its regular session, held in the year A.D. 1844-5, and approved on the third day of March 1845, was and has ever since continued to be and still is in force in the State of Illinois and that by said first section it is enacted and provided as follows to wit:—

Section 1. The Common law of England so far as the same is applicable, and of a general nature, and all statutes or acts of the British Parliament made in aid of and to supply the defects of the common law, prior to the fourth year of James the first excepting the second section of the sixth Chapter of forty third Elizabeth, the eighth Chapter of thirteenth Elizabeth, and the ninth Chapter of thirty seventh ~~Henry~~ Henry Eighth; and which are of a general nature and not local to that Kingdom shall be the rule of decision and shall be considered as of full force until repealed by legislative authority;

And by means of the said assignment and the death of the said Baldwin and by means of the said several enactments of the General Assembly of the State of Illinois as construed expounded and interpreted, by the Supreme Court of the State of Illinois, the legal title to the said two promissory notes vested in the Plaintiff, and a right of action has accrued to him to demand and recover the said sums of money in said two promissory notes specified, with interest on said notes according to the tenor and effect thereof, respectively the President, Directors and Company of the Bank of Illinois, being at the time of the making of the said note first in this complaint mentioned, authorized and empowered by the laws of Illinois to contract for, collect and recover interest at the rate specified in said promissory note as appears by Sections one and two of an Act of the General Assembly of the State of Illinois entitled "An Act to regulate the interest of money". Approved February 28th 1833, a copy of which sections one and two is herewith filed as a part of this complaint marked "Exhibit C".

Wherefore the Plaintiff demands judgment for the sum of 6000.

Baker & Garvin
Attys for Plaintiff

Exhibit (1) An Act to incorporate the President, Directors and Company of the Bank of Illinois. —

Be it enacted by the legislative Council and House of Representatives of the Illinois Territory, and it is hereby

Capital
\$300,000
one third reserved
for the State

enacted by the authority of the same, That a Bank shall be established at Shawneetown, the capital stock whereof shall not exceed, three hundred thousand dollars to be divided into shares of one hundred dollars each, one third thereof to remain open to be subscribed by the Legislature of this Territory or State, when a State government shall be formed, which Territory or State shall be entitled to such part of the dividend of the said Corporation, in proportion to the amount actually subscribed by such Territory or State, which one third shall be divided into shares of one hundred dollars each, in the same manner as the individual stock is divided, and that subscriptions for constituting the said stock, shall on the first Monday in January next, be opened at Shawneetown, and at such other places as may be thought proper under the superintendance of such persons as shall hereafter be appointed, which subscriptions shall continue open, until the whole capital stock, shall have been subscribed for: Provided however that so soon as there shall be fifty thousand dollars subscribed for in the whole and ten thousand dollars thereof actually paid in, the said corporation may commence business and issue their notes accordingly.

When \$30,000
subscribed the
\$10,000 paid in
the bank to go
into operation

Subscriptions

Sec. 2. Be it further enacted That it shall be lawful for any person, or partnership, or body politic to subscribe for such or so many shares, as he, she, or they may think fit, nor shall there be more than ten shares, subscribed for

in one day by any person, copartnership or body politic for the first ten days after opening the said subscriptions. The payments of the said subscriptions, shall be made by the subscribers respectively, at the time, and manner following; that is to say, at the time of subscribing, there shall be paid into the hands of the persons appointed to receive the same, the sum of ten dollars in gold or silver on each share subscribed for, and the residue of the stock, shall be paid at such times and in such instalments as the Directors may order. Provided that no instalment shall exceed twenty five ~~dollars~~ per cent on the stock subscribed for, and that at least sixty days notice be given in one or more public newspapers in the territory; And provided also that if any subscriber, shall fail to make, the second payment at the time appointed by the Directors for such payment to be made, he shall forfeit the sum, so far as him, her or them first paid, to and for the use of the corporation.

Instalments
not to exceed 25
per cent and to be
called in on 60
days notice

Quarter to
continue until
1st of Jan 1837

Sec 3^d. Be it further enacted That all those who shall become subscribers to the said Bank, their successors and assigns shall be, and they are hereby created, and made a corporation and body politic, by the name and style of the President, Directors and Company of the "Bank of Illinois" and shall so continue until the first day of January, one thousand eight hundred and thirty seven, and by that name, shall be ^{and} hereby made able and capable in law to have, purchase, receive, possess, enjoy and retain to them and their successors, land, rents,

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Real & Personal Tenements, hereditaments, goods, chattels and effects, of what
estate not to kind, nature or quality soever to an amount not exceeding
exceed \$500,000 in the whole, five hundred thousand dollars including
the capital stock aforesaid, and the same to grant, demise,
alien or dispose of, to sue and be sued, plead and be impleaded
answer, and be answered, defend and be defended in Courts
of Record or any other place whatever; and also to make,
have, and use, a common seal, and the same to break, alter
and renew at pleasure, and also to ordain, establish and
put in execution such bye laws, ordinances and regulations
as they shall deem necessary, and convenient for the govern-
ment of the said corporation, not inconsistent with the laws
of the territory or constitution, and generally to do, perform
and execute all and singular acts, matters and things
which to them it shall, or may appertain to do, subject however
to the rules, regulations, limitations and provisions herein-
after prescribed and declared.

Twelve Directors Dec 4. Be it further enacted That for the well ordering
to be chosen of the affairs of the said corporation, there shall be twelve
Directors, the first election for whom, shall be by the stock-
holders, by plurality of votes actually given on such a day
as the persons, appointed to superintend the subscriptions
for stock, shall appoint, by giving at least, thirty days previous
notice in all the public newspapers of the territory, and those
who, shall be duly chosen, at any election, shall be capable
of serving as Directors, by virtue of such choice, until the full
end or expiration of the first Monday in January next ensuing

Election on } the time of such election and no longer; and on the said
 1st Monday } first Monday in January, in each and every year there-
 in January } -after, the election for Directors, shall be holden, and
 Annually } the said Directors, at their first meeting after each
 election, shall choose one of their number as President;
 Dec 5th. Be it further enacted, That in case it, should
 When there is } happen at any time that an election for Directors, should
 no election, } not be had, upon any day, when pursuant to this act,
 charter day, } thought to have been holden, the corporation shall not
 the Election to } be held as the } for that cause be considered as dissolved, but it shall be
 By laws direct } lawful to hold an election for Directors on any other day,
 agreeably to such by laws and regulations, as may be made
 for the government of said Corporation, and in such case,
 Directors } the Directors, for the time being, shall continue to execute
 continue until } and discharge the several duties of Directors until such
 others are chosen } election is duly had and made;
 Any thing in the fourth section of this act to the contrary
 Vacancies to be } notwithstanding; and it is further provided, that in case
 filled by election } of death, resignation or removal of any Director or Dis-
 -ectors, the vacancy shall be filled by election for the bal-
 -ance of the year.
 Sect 6. Be it further enacted, that a majority of the Direct-
 Appointment } -ors, for the time being, shall have power to appoint such
 of Officers } officers, clerks and servants under them, as shall be
 Clerks &c } necessary for executing the business of said corporation,
 and to allow them such compensation for their services

respectively as shall be reasonable; and shall be capable of exercising such other powers, and authorities, for the well governing, and ordering the affairs of the said corporation as shall be prescribed, fixed and determined by the laws, regulations and ordinances of the same;

Provided always that a majority of the whole number of Directors shall be requisite in the choice of a President and Cashier.

Sec 7. And be it further enacted That the following rules, restrictions, limitations, and provisions, shall form and be the fundamental articles of the Constitution of the said Corporation, to wit; the number of votes to which the Stock-holders shall be entitled in voting for Directors, shall be according to the number of shares, he, she or they, respectively hold, in the proportions following; that is to say for one share, and not more than two shares one vote; for every two shares, above two, and not exceeding ten, one vote; for every four shares above ten, and not exceeding thirty one vote; for every six shares above thirty, and not exceeding sixty one vote; for every eight shares above sixty and not exceeding one hundred one vote; for every ten shares above one hundred, one vote; and after the first election, no share or shares, shall confer a right of voting, which shall not have been holden, three calendar months previous to the day of election.

2. The Governor of the State or territory so hereby appointed

of President
& Cashier

Number of
Votes, Stock-
holders, entitled
to

Share must
have been
holden three
months before
election

agent for the Legislature to vote for President, Directors and Cashier of said Bank, and is hereby entitled to exercise the right of voting, the same, in proportion to the number of shares actually subscribed for by the Legislature in the same ratio that individuals or other bodies politic or corporate are entitled to vote for; and the said agent hereby appointed, shall exercise the power hereby vested in him until the Legislature shall make other regulations respecting the same, and no longer.

3. None but a bona fide Stockholder, being a resident citizen of the territory, shall be a director; nor shall a Director be entitled to any other emolument than such as shall be allowed by the Stockholders at a general meeting, but the Directors may make such compensation to the President for his extraordinary attendance at the bank, as shall appear to them reasonable and just;

4. Not less than four Directors shall constitute a board for the transaction of business, of whom the President shall always be one, except in case of sickness or necessary absence, in which case his place may be supplied by any other Director, whom he, by writing under his hand may depute for that purpose.

5. Any number of Stockholders, not less than fifteen, who shall be proprietors of, not less than fifty shares, may call a general meeting of the Stockholders, for purposes, relative to the institution, by giving

at least thirty days notice in one or more of the public newspapers of the territory, specifying in such notice, the object or objects of such meeting, and may moreover appoint three of their members as a committee to examine into the state and condition of the Bank, and the manner in which the affairs of the Bank have been conducted, Provided that no members of such committee shall be a Director, President or other officer of any other Bank.

And may appoint a committee to examine Bank

Cashier and other officers to give security

6. Every Cashier before he enters upon the duties of his office shall be required to give bond with two or more sureties to the satisfaction of the Directors in a sum not less than ten thousand dollars, conditioned for his good behavior, and the faithful performance of his duties to the said corporation, and the other officers, and servants shall also enter into bond and security in such sum as the President and Director may prescribe.

Real Estate

7. The lands, tenements and hereditaments, which it shall be lawful for the said corporation to hold, shall be only such, as shall be requisite for its immediate accommodation, in relation to the convenient transaction of its business, and such as shall have been bona fide mortgaged to it, by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased upon judgments which shall have been obtained for such debts

Debts of the Bank not to exceed double

8. The total amount of debts which the said corporation shall at any time owe, whether by bond, bill, note, or other contract, shall not exceed twice the amount of their capital stocks,

the amount of Capital paid in } actually paid, over and above the moneys ^{then} actually deposited in the bank for safe keeping; and in case of excess the Directors under whose administration it shall happen, shall be liable for the same, in their natural and private capacities, and an action of debt, may be brought, against them or any of them, their or any of their heirs, executors, or administrators in any Court competent to try the same, or either of them, by any creditor or creditors of the said corporation; but this provision shall not be construed to exempt the said corporation, or the lands, tenements, goods or chattels, of the same from being liable for and chargeable with the said excess; such of the said Directors who may have been absent when the said excess was contracted or created, may respectively exonerate themselves from being so liable, by forthwith giving notice of the fact, and of their absence or dissent at a general meeting of the stockholders, which they shall have power to call for that purpose.

Directors }
to trade }

9. The said Corporation shall not directly or indirectly deal or trade in anything, except bills of exchange, gold or silver, or in the sale of goods, really and truly pledged for money lent, and not legally redeemed in due time, or of goods which shall be the produce of its lands, neither shall the said corporation, take more than at the rate of six per cent per annum for or upon its loans or discounts.

As to rates of }
discount }
Stock }
transferable }

10. The shares of the Capital Stock, of the said Corporation shall be assignable and transferable at any time, according

to such rules, as shall be established in that behalf, by the laws and ordinances of the same; but no stock shall be transferred, the holder thereof being indebted to the bank, until such debt be satisfied, except the President and Directors shall otherwise order it:

Obligations of
Bank under
Deal to be assign-
ed by endorsement

11. The bills obligatory and of credit under the seal of the said corporation, which shall be made payable to any person or persons, shall be assignable by an endorsement thereupon, shall possess the like qualities, as to negotiability, and the holders thereof, shall have and maintain the like actions thereon as if such bills obligatory and of credit, had been made, by or on behalf of a natural person, and all bills or notes, which may be issued by order of the said corporation signed by the President, and countersigned by the principal Cashier, or Treasurer thereof, promising the payment of money to any person or persons, his, her or their order, or to bearer, though not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner and with like force and effect, as upon, any private person or persons, if issued by him, her, or them, in his, her, or their private or natural capacity or capacities, and shall be assignable and negotiable, in like manner as if they were so issued, by such private person or persons, that is to say, those, which shall be payable to any person, or persons, his, her or their order, shall be assignable by endorsement, in like manner, and with like effect, as bills of exchange now and;

Notes though
not under seal
binding and
negotiable

and those which are payable to bearer, shall be assignable and negotiable by delivery only.

Half yearly
dividends to
be made

12. Half yearly dividends, shall be made of so much of the profits of the bank, as shall be deemed expedient and proper, and once in every three years the Directors shall lay,

Statement of
suspended debts
to be made to
stockholders
triennially

before the stockholders at a general meeting, an exact and particular statement of the debts which shall have remained unpaid after the expiration of the original credit, for a period of treble the time of that credit, and of the surplus of profits, (if any) after deducting losses and dividends. If there shall be a failure in the payment of any part of any sums subscribed to the capital of said bank, the party failing, shall lose the dividend, which may have accrued, prior to the time of making such payment, during the delay of the same — Sect 8. And be it further enacted, That the said corpo-

Suspension
of specie payments
prohibited

ration shall not at any time suspend or refuse payment, in gold and silver of any of its notes, bills or obligations; nor of any moneys received upon deposit in said Bank, or in its office of discount and deposit; and if the said corporation, shall at any time refuse, or neglect to pay on demand any bill, note or obligation issued by the corporation, according to the contract, promise, or undertaking therein expressed, or shall neglect or refuse to pay on demand any moneys received in said Bank ⁱⁿ its office aforesaid on deposit, to the person or persons, entitled to receive the same, then and in every such case, the holder of any such note, bill or obligation

or the person or persons, entitled to demand and receive the same, shall recover interest on the said bills, notes, obligations, or moneys, until the same shall be fully paid and satisfied, at the rate of twelve per cent per annum, from the time of such demand as aforesaid.

Provided, That the Legislature of this Territory may at any time hereafter enact laws to enforce and regulate the recovery of the amount of the notes, bills, obligations, or other debts, of which payment, shall have been refused as aforesaid, with the rate of interest above mentioned; vesting jurisdiction for that purpose in any courts, either of law or equity, within this territory.

Commissioners
to receive
subscriptions

Feb 9. Be it further enacted that John Marshall, David Apperson, Samuel Hays, Leonard White, and Samuel B Campbell, or any three of them shall be commissioners for the purpose, of receiving subscriptions, and who shall have power, to appoint a person to receive the money required to be paid at the time of subscribing; and the said receiver, shall as soon, as the Directors are appointed, pay over the same into the hands of such person, as the Directors may direct.

Charter to
continue for
purposes of
final settlement

Feb 10. Be it further enacted, That the aforesaid corporation shall not be dissolved previous to the expiration of their charter, nor until all their debts, contracts, notes, bills of exchange, and undertakings in their corporate capacity, shall be finally and faithfully settled; Provided also, That after the expiration of their charter they shall not transact,

business, according to the true meaning and intent of this act, further than to settle and close their contracts, as above provided; This Act to take effect from and after its passage -

Approved December 28th 1816 -

Exhibit
(2)

A Bill for an Act to extend for a limited time, the Charter of the Bank of Illinois at Hannaburton.

Be it enacted by the People of Illinois, represented in the General Assembly, That the Act of the Legislature of the late Territory of Illinois entitled, "An Act to incorporate the President, Directors and Company of the Bank of Illinois," approved December 28th 1816, be and the same is,

Charter extended
20 years from
1st of Jan 1837

hereby continued in force, for the term of twenty years from the 1st of January 1837, and the said Corporation is hereby authorized to demand and receive for loans made, the follow-

Rates of discount
altered

-ing rates of interest, to wit; On loans for six months or under at the rate of six per cent per annum; and on loans over six months, at the rate of eight per cent per annum.

Stock to be
forfeited for
non-payment of
instalments

Be it Enacted, That stock in said Bank on which payments shall not be made, in pursuance of regular calls, made by the board of Directors, shall become forfeited to the said Bank, and shall be open again to be subscribed for, and taken by any other person, or persons, in such public mode, as the Board of Directors shall prescribe, of which reasonable public notice shall be given;

The amount paid to
be refunded, without
interest or dividends

Provided the said Bank shall refund to the original proprietors thereof of whatever amount (but without interest or dividends) shall have been actually paid in by them on such stock.

Governor to
sell the stock
reserved for the
State to the
highest bidder

Sec 3. It shall be the duty of the Governor of this State, within three months from the passage of this Act, to cause public notice, to be given, in such newspapers in this State, and elsewhere, as he shall judge proper, that on the first day of May next, the one hundred thousand dollars of the stock of said Bank, reserved by the charter thereof, to be subscribed for, by the State, will be sold at the banking house in Savannah to the highest bidder, and on that day he shall cause to be sold as aforesaid, for the highest premium which can be got, the said one hundred thousand dollars of stock, in lots of not less than ten shares, nor more than fifty shares at a time; and the said stock when thus sold, shall be entered on the books, of the Bank, in the names of the purchasers thereof, and shall be subject to the same rules and regulations as other stock, in said Bank; and if said stock should not be sold on said day, the same shall be and remain open for subscription on the Books of said Bank until the same shall, be all subscribed for and taken. The premium for which said stock shall be sold, shall be paid into the State Treasury, for the use of the people of the State; Provided That said Bank shall pay into the State Treasury, annually one half per cent on the Capital Stock, actually paid into said Bank to be used for State purposes; and said Bank shall be exempt from further taxation, in consideration thereof. —

Premiums to be
paid into the
State
Treasury
Bank to pay
annually half
per cent in Capital
stock in and be
exempt from
further Taxation

— Approved February 12th 1835

Exhibit
(2)

\$ 2000.00

Bank of Illinois

Shawneetown 5th March 1841

Six months after date I promise to pay to the President, ²ars
Directors & Co of the Bank of Illinois Two Thousand $\frac{00}{100}$ Doll
with interest at the rate of eight per centum per annum from
date until paid without defalcation, for value received,
O W Vanlandingham.

Exhibit
(3)

\$ 2000.00

Bank of Illinois

Shawneetown 5th May 1841

Six months after date I promise to pay to the President, Direct
ors and Co of the Bank of Illinois Two Thousand $\frac{00}{100}$ dollars
with interest at the rate of six per centum per annum from
date, until paid without defalcation for value received.
O W Vanlandingham.

Exhibit
(3)

An Act to reduce the public debt one million of dollars, and
to put the Bank of Illinois into liquidation.

Governor may Sect 1st. Be it enacted by the people of the State of Illinois
all the State stock represented in the General Assembly, That the Governor shall
in the Bank of Illinois be authorized to negotiate a sale of the stock held by the State,
Illinois in the Bank of Illinois to said Bank upon the following
terms; that is to say, that the Bank shall surrender to the
Governor

for the use of the State, as an equivalent for said Stock an amount of the liabilities of the State, equal on their face to the sum of one million of dollars; one half of said amount to be surrendered as aforesaid within five days after the passage of this Act, and the residue, with six per cent interest thereon, from the date of sale, within twelve months after the passage hereof.—

Upon such sale being made, he shall make an assignment

If the Bank of Illinois fails to pay for the Stock, Governor may sell the same, to any person, and receive the amount in State liabilities

Sec 2nd. If the Governor shall sell the Stock of the State as aforesaid, he shall upon the receipt of the first half of the consideration therefor, as aforesaid, assign to the Bank for the use of the private stock-holders therein, one half of the Stock of the State in said institution, and an undivided half of all the interest and right of the State in the choses in action, moneys and property of the Bank, both real and personal, but the residue of said Stock, shall be subject to a lien in favor of the State, until the residue of the consideration therefor, shall be fully paid, and discharged, and if the Bank shall pay the residue of said consideration at the time appointed in the preceding Section, then the said residue of the State-Stock, and all the rights and interests of the State in the choses in action, moneys and property of the Bank, both real and personal, shall be assigned thereto by the Governor, as and for the use aforesaid, but if the Bank shall fail to make payment as aforesaid then the said residue of Stock shall revert to and be held by the State, in the same right in which it is now held,

and in case of such reversion, it shall be the duty of the Governor thereupon to sell and assign the same, with all the right and interest of the State in the property of the Bank, both real and personal, and in its chases in action, to any person or persons who will purchase the same and pay therefore, an amount in the liabilities of the State, equal on their face to the sum of five hundred thousand dollars, and the purchaser or purchasers of said stock shall be entitled to elect and have the three Directors, provided for on the part of the State, in the third Section of this act, who shall be elected, by the said purchaser or purchasers of the said stock, according to the usage of the Bank in that respect; Provided that if the Bank shall make default in paying the residue of the consideration for the stock of the State, as aforesaid, the Bank shall forfeit to the State an amount of money equal, to the interest upon five hundred thousand dollars for twelve months, at the rate of six per cent per annum, which shall be paid by the Bank to the State, in addition, to any dividends, and profits which, the State may be entitled to, under the provisions of this Act, upon the final settlement of its affairs.

Rights of the purchaser of said stock }
 Forfeiture on the part of the Bank in case of failure to pay }
 Directors of the Bank reduced }
 Sect 3^d. Upon the receipt of the first half of the consideration for the stock of the State as aforesaid, the directory of the Bank shall, be reduced to eight in number, three of whom shall be appointed, by the Governor and Senate, whose tenures of office, shall be the same, as now provided by law; and five by the private stock-holders of the Bank, according to the usage in that respect;

Provided That the Directors on the part of the State, shall be forever withdrawn from the Bank, upon full payment being made, by the Bank for the Stock, of the State as aforesaid.

Bank to go into liquidation

Sec 4. If the Bank shall accept of the provisions of this Act under its corporate Seal, within thirty days after the passage hereof, to be filed in the Office of the Secretary of State, then and in that case, it shall go into liquidation, and be finally wound up, according to the rules, and regulations hereby established.

Governor to appoint a Commissioner

Sec 5. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint a commissioner, to be styled "The Commissioner of the Bank of Illinois" who shall be commissioned by the Governor, and under his direction, shall enter

who shall give Bond

into Bond, with approved security, in the penal sum of one hundred thousand dollars, to the Governor for the use of all persons interested or to be interested, conditional for the faithful performance of the duties of his Office, according to law, and who

and take oath

shall also before entering, upon the duties of his said Office, be sworn faithfully and truly to perform, the duties thereof, which oath shall be in writing, and be filed in the Office of Secretary of State;

Compensation

said Commissioner shall receive such compensation for services actually performed, not exceeding three dollars per day, as may be allowed by the Governor, and shall hold his Office for two years, unless sooner removed by the Governor for good cause, to be reported to the next General Assembly, and in case of such removal, the Governor, shall have power to fill the vacancy, by an appointment to endure until the next succeeding Session of the General Assembly.

Bank shall pay out all its specie pro-rata upon its indebtedness to Stockholders

Sec 6. The Bank of Illinois shall go into liquidation, within thirty days after the passage of this Act, and at the end of that time, shall pay out all its specie on hand except fifteen thousand dollars; the said payments of specie, shall be made at the counter of the principal Bank at Hannettown pro-rata; that is proportionably on all its liabilities, and indebtedness, whether of the principal bank or branches except upon its indebtedness to Stockholders, as the same may be presented for payment, and shall annually thereafter, pay out the specie, found on hand except the fifteen thousand dollars, reserved as aforesaid, in manner aforesaid, including like payments upon the certificates of balances hereinafter provided for, except to stockholders as aforesaid; and the said Bank shall make and deliver certificates, signed by the President and Cashier to such creditor for the residue of his debt after deducting the payment in specie from, the whole amount of such debt, which certificate, shall be registered, by the Commission aforesaid in a book by him kept for that purpose; said certificate, shall be issued for such sums, not less than ten dollars, as will suit the convenience of the creditors of the Bank, and shall be received in payment of any debt due or to become due to the Bank, and in payment for any real estate purchased or to be purchased of the Bank and in redemption of any bank sold or to be sold, and bought or to be bought by the Bank on reception, but the Bank shall not directly or indirectly, purchase any of the certificates issued under the provisions of this Act.

And give certificates for residue

(Certificates to be not less than ten dollars)

Sec 7. The said Bank shall not in future discount any note lend any money, buy or sell any bill of exchange, issue any

Bank hereafter
not to do any
banking business
only to wind up
its affairs

papers for circulation, or receive any deposits, or do any other
act usually done by Banks, but shall confine all its operations
to winding up its affairs, collecting and securing its debts,
paying the debts of the Bank, selling its real and personal estate,
issuing the certificates for balances, provided for in the sixth section
of this Act, and to renewing the notes of its debtors, from time to time
upon the payment of one fifth part each time, and to suing and
being sued, in relation to all its dealings; for which purpose
and for no others whatever, the charter of said Bank is continued

and renewing
its notes &c

for this purpose
the charter is
continued 4 years
Proviso, (charter)
repealed after 4
years

for the term of four years, from the fourth day of March, A. D.,
one thousand eight hundred and forty three; Provided that
if the said Bank accepts the provisions of this Act the charter
of the same shall be and is hereby repealed at and upon the expir-
ation of the said term of four years from the fourth day of March
as aforesaid.

Creditors to
deliver bank notes
and other evidences
of indebtedness

Sec 8. The aforesaid creditors of the Bank shall, before they
shall be entitled to receive the certificates aforesaid deliver up to the
Bank, all notes and other evidences of debt held by them, and receipt
for all judgments and other demands, in favor of such creditors
against the said Bank.

Powers and duties
of Bank Commissioner

Sec 9. The Bank Commissioner aforesaid shall superintend
the proceedings of said Bank, and shall exercise due vigilance
over the proceedings of the same and for that purpose he shall have
free access to the books, papers, vouchers, vaults, and cash of said
Bank, and shall have power, in prosecuting his inquiries to ad-
minister an oath, to the President, Directors, Cashiers, Tellers,

clerks and all other persons, and compel them or either of them to testify, in relation to the said bank or in relation to any matter or thing touching the proceedings of its officers, affecting the interest of the State, the creditors of the Bank or of the stockholders; and upon the refusal of any of them to be sworn or testify, he shall have power to issue his warrant to any Sheriff and commit such President, Cashier, Clerk Teller or other person, to the common jail of the County, until he or they shall consent to be sworn or testify, as the case may be; and if the said Comptroller

Duty of Comptroller, in case any of the provisions of this act are about to be violated.

shall at any time discover that any dishonest practices and contrivances, in violation of the provisions of this act and about to be violated, are or are about to be committed by said Bank, or any of its officers, in the management of its business, or that it is about to violate any provision of law, then the said Comptroller shall immediately certify the fact to some justice of the Supreme Court, whose duty it shall be, to issue an injunction against said Bank, which shall be executed as in other cases, and made returnable to the Circuit Court of Ballatin County, sitting as a Court of Chancery, and shall be proceeded in, as in other cases in Chancery, except that the said Circuit Court of Ballatin County, on the Chancery side thereof, shall always be and remain open to hear causes arising under this act. The injunction to be issued, shall absolutely restrain the said bank and all officers and persons connected with it, from doing any act whatever, in relation to the matter enjoined until the further order of the said

the judge to appoint a day for the hearing of the cause, not exceeding ten days after the date of the said, and he or any other judge, may hold the court for that purpose.

Hearings how
conducted

No depositions shall be required to be taken, but witnesses may be sworn and their evidences heard in open Court, and upon the hearing of the cause, the judge shall have power to alter, modify or dissolve the injunction, or make it perpetual; and if it shall appear that the Bank has violated any provisions of this act, or if it should manifestly appear, that the creditors or stockholders, will be defrauded then the said Court, shall have power to decree a forfeiture of the Charter of the said Bank.

If the Bank shall
forfeit its charter
its real and personal
estate shall not
thereby be forfeited

Sec 10. If the said Bank shall forfeit its charter as aforesaid it shall not thereby forfeit any of its personal effects, its bond shall not be void, nor shall it be released from any liability, nor shall any person be released from liability to the Bank, nor shall any security for the payment of money either to or from the Bank be in any wise impaired, or violated, but the said Court or Judges shall appoint

Receivers to be
appointed who shall
give bond and take
oath

three honest and capable men to act as the receivers of said Bank who shall execute Bonds, with approved security, conditioned for the faithful, true and diligent performance of their duties of their appointment, and who shall take and subscribe the following oath,
"I do solemnly swear or affirm that I will faithfully, truly and diligently perform the duties of receiver of the Bank of Illinois, which bonds and oaths shall be filed in the Office of the Auditor, of Public Accounts.

Powers and
duties of receivers

Said receivers shall have power and perform the duties of receivers as in other cases, and shall proceed in the management of the affairs of said Bank, in collecting and paying its debts, in selling its real estate, and other property, according to such rules and reg-
-ulations

not inconsistent with law as shall be made by such court or judge in that behalf, except that the specie shall be paid out pro rata to creditors; and in collecting the debts due the bank, the debtor shall have the right to renew, the evidence of his indebtedness with security upon the payment of one fifth part of his debt, every seven months. The said receivers shall not sell any real or personal property of the bank, for less than two thirds of its appraised value, to be ascertained by the appraisal of three householders, or a majority of them on oath, to be appointed by the Judge of the Circuit Court of the County, where the property may be situated; all payments to be made by the receivers, shall be made pro rata amongst the creditors, who upon giving up their demands to the receivers, shall receive a certificate for the residue of their claims, which certificate shall be received as is provided in the sixth Section of this act.

In what manner
debts shall be
collected

Debt 11. The said Bank in collecting its debts shall not collect more than one fifth part of the debt, any one time of any debtor, who will pay the said fifth part, and all interest, whether the debt exist by judgment or otherwise, and renew his note or other liability, with security to be paid in seven months; Provided that the Bank shall not hereafter be allowed to charge a greater rate of interest, than six per cent per annum, on the renewal of any note.

Real estate of
Bank be appraised
and sold

Debt 12. The real estate of said Bank shall be appraised by three householders, or a majority of them on oath, to be appointed by the Judge of the Circuit Court of the County where the real estate,

- at its appraised value } may be situated; said real estate, when so appraised shall be subject to sale and shall be sold, whenever thereafter the appraised value, shall be offered for the same; the real estate of the Bank shall not be sold on execution for less than two thirds of its appraised value, to be ascertained as aforesaid; No debtor of the Bank shall be garnished by any holder of the certificates authorized to be issued to creditors under the provisions of this act, Sect 13. The said Bank shall be required to abolish all its branches, and the notes issued by said branches shall be payable at the principal Bank.
- Branches } abolished
- State to receive its share of dividends, if Bank fails to make payment of Stock } Sect 14. If the Bank shall fail to make full payment for the stock of the State; and any part of the same shall revert to the State, and shall not be afterwards sold by the State as herein provided for, it shall be the duty of said Commissioners to see that the State, as the holder of so much Stock, shall receive its pro rata share of the dividends and profits of the Bank if any there shall be, and also the amount of any forfeiture which may accrue to the State, under the provisions of this act, upon the final settlement of its affairs.
- State liabilities received of Bank to be registered and destroyed } Sect 15. It shall be the duty of the Governor upon the receipt of any of the liabilities of the State, under the provisions of this act, to cause the same to be registered by their numbers, amounts and dates, in the office of Secretary of State, and shall then produce the same to be destroyed by fire, in the presence of the General Assembly if the same be in session, and if the General Assembly be not in session to cause the same to be destroyed in like manner, in the

presence of the Auditor and Treasurers, and make report of his actings and doings in the premises, to the next General Assembly.

Form of
(Certificate)

Sec 16. The Certificate to be issued under the provisions of this Act, shall be in the following form "This Certificate for ——— dollars and ——— cents, will, at all times be received by the Bank of Illinois, in payment of any debt, due the Bank, and for any property which the Bank may have for sale, and in redemption of any lands, sold or to be sold under execution by the Bank, and will also entitle the bearer to his due proportion of all dividends which may be made to the Creditors of the Bank

"Cashier" "President".

Act to put the
Bank of Illinois
into liquidation
suspended

Sec 17. If the Bank shall accept the foregoing provisions of this act, and shall go into liquidation as aforesaid, then and in that case, the provisions of an act entitled "An act to put the Bank of Illinois into liquidation, shall be suspended, for and during the term of four years, from and after the fourth day of March, 1843, and for the purpose of enabling the Bank to signify such acceptance, and to go into liquidation as aforesaid, the operation of the provisions of the act, the title of which is above recited, shall be, and the same are hereby suspended for the period of thirty days, from and after the passage hereof.

Approved February 20th 1843.

Exhibit
(10)

An Act supplemental to an Act to reduce the public debt one million of dollars, and to put the Bank of Illinois into liquidation -

Sec 1. Be it enacted by the People of the State of Illinois represented in the General Assembly, That the Governor of this State, shall be and is hereby authorized, and required to receive from the Bank of Illinois, three hundred and thirty three interest Bonds now in his hands, under a conditional agreement made by him with James Dunlop, President of said Bank, and also fifteen thousand dollars of Illinois internal improvement scrip, including interest thereon, which together with the sum of seventy three thousand, two hundred and sixty dollars, being interest upon said Bonds making nominally the sum of four hundred and twenty one thousand, two hundred and sixty dollars; but which were illegally hypothecated, except the scrip, at the sum of, two hundred and five thousand dollars, for the whole amount in full for the same; and for which the said Governor, shall transfer to the said Bank, the sum of two hundred and five thousand dollars, of the Stock which the State now holds in said Bank.

Sec 2nd. An receipt of said securities under the provisions of this act, and its acceptance by said Bank herein provided, for, the State relinquishes all claim against the Bank for damages and interest, under the provisions of the second section of the act to which this is supplementary.

Sec 3. The Bank shall within thirty days after the passage

of this act, accept or reject the provisions of this act, if the same shall be accepted within that time by said Bank, the said Bank shall within thirty days after such acceptance make an assignment of all the effects of said Bank, both real and personal of every kind and description to Albert B. Caldwell of Shannettown and C. Z. Bryan of Lawrenceville, John B. Hardin of Jacksonsville, and Samuel Dunlap of Jacksonville as follows: All the real estate of said Bank to be transferred to all said assignees jointly, and all the personal estate, rights and credits, and debts of every kind, due to said Bank, at Shannettown and Branch at Lawrenceville, shall be assigned to the said Albert B. Caldwell and C. Z. Bryan, and all due to said Bank at Jacksonsville, Dalton and Stehens Branches, shall be assigned to the said John B. Hardin, and Samuel Dunlap: said assignees shall give bond, jointly or severally, or any two together, as they may elect, and the Governor shall require with security to be approved by the Governor, in the penal sum of fifty thousand dollars for each assignee, which bond or bonds shall be conditioned for the faithful discharge of the duties of such assignee, and to faithfully account for and pay over, all the means and evidences of indebtedness which shall come to his hands, as such assignee, under the provision of this act.

Sec 4. The balance of \$ 295,000 of State Stock in said Bank shall be paid by the said assignees to the State, within four years, from the passage of this act, in State liabilities at par, other than the McAllister and Stebbins bonds: Provided

That all the debts of the Bank shall be first paid, unless on compromise of doubtful debts, said assignees may receive State indebtedness, and pay the same over to the State, on said Stock, and whenever an amount is so received by the Governor, he shall transfer an amount of Stock equal to the amount so received until the whole amount, shall be so paid with interest on the Stock, from the date of the passage of this Act, at the rate of six per cent per annum: Should the Bank by its assignees fail at the end of said term of four years to make full payment of the balance of State Stock, the Bank shall forfeit to the State, the sum of twenty thousand dollars in State liabilities, to be paid out of the means of said Bank after the payment of all debts presented at the expiration of said term.

Sec 5. That after the payment in full of all the liabilities of said Bank, presented, the end of said term of four years from the passage of this Act, should the private Stockholders fail to pay the State, the full amount of her Stock in the same, then the remainder of the assets, shall be divided between the State and private Stockholders, in proportion to the amount of the Stock held by each after the payment to the State, of the twenty thousand dollars forfeiture herein provided for.

Sec 6. All private payments of specie, required by the Act to which this is supplemental, shall be made, by the assignees at Hannetown, and all said assignees shall proceed to wind up the concerns in strict accordance, with the provisions of said Act, and in renewing notes, they shall take the renewed

notes payable to themselves as assignees, and when certificates shall be necessary to be issued, under said act, they shall be signed by one of the said assignees to be selected by them & c. That so much of the act to which this is a supplement as provides for the appointment of a Bank Commissioner of said Bank, & and the same is, hereby repealed, and the power is hereby vested under this act, with the power of said Commission^{er} & c. The said assignees shall on the first Monday in November in each year meet at Philadelphia for the purpose of cancelling and burning all notes and certificates redeemed, and making a full report to the Governor of the amount of assets in their hands and of the notes and certificates redeemed and cancelled, and for this purpose, three of the said assignees shall constitute a quorum.

& c. Said assignees shall proceed to collect all debts due to said Bank other than Stock notes, according to the provisions of the act to which this is a supplement, and the collection of the Stock notes, shall not be coerced, until the other assets of said Bank are exhausted or the interest of the creditors shall require the same to be collected, and only so much of said Stock notes shall be collected as will be sufficient to meet the liabilities of said Bank.

& c. Said assignees shall be authorized to make conveyance of the real estate, belonging to said Bank or hereafter to be received by them in payment of debts or as compromise of any demand due the same in fee simple, but shall not

give any covenants or warranty of title in said deed. In any such deed or deeds all said assignees shall join.

Sec 11. Said assignees shall also have power upon giving thirty days notice in some newspaper to sell real estate of said Bank for cash at public sale to the highest bidder, for the purpose of raising funds to pay taxes, clerks and sheriffs fees for the redemption of lands sold under execution, and other necessary expenses.

Sec 12. Before renewing any indebtedness the said assignees may require the debtors to pay ~~debts~~ all interest and costs due and incurred on their debts, and such costs shall be paid in specie or its equivalent.

Sec 13. Should any of the persons named in this act as assignees die, resign, or refuse to act, the vacancy may be filled by the remaining assignees, and on their failure or refusal so to do, the Governor shall fill such vacancy, and such assignee shall give bond and security as provided by this act, and thereupon all the right, title and interest in and to all the property, estate, rights and credits, embraced in said assignment or accruing by virtue thereof, which was vested or should have vested under the provisions of this act, both in law and equity, shall vest in such assignee or assignees so appointed.

Sec 14. Said assignees shall be allowed such compensation for their services as may be agreed upon at the time of making said assignment not to exceed eight percent on all collections made by them, from debts or by sales, to be retained by them

out of the amount raised by collections on sales, and which shall be in full for all services, including attorneys fees for suits in this State, and from and after such assignment the pay of all the officers of said Bank shall cease. except said assignees.

Sec 15. Said assignees shall have full power and authority to collect debts due said Bank, and make such compromises and settlements, as they may deem most advantageous to the said Bank, provided that no compensation shall be made without the joint action or concurrence of two of said assignees.

Sec 16. In case said Bank shall not accept of the provisions of this act within thirty days after the passage of the same, and make the assignment herein before provided for, then said Bank and the funds and means, personal and real assets thereof shall be put into the hands of receivers, under the provisions of the act, to which this is a supplement by order, in writing, from the Governor to the Judge of the third judicial Circuit, requiring the same to be so done, or by any of the creditors of said Bank, who shall at the time be a creditor to the amount of fifty thousand dollars. —

Sec 17. The assignees shall have four years from the passage of this act to make final settlement of the affairs of said Bank without hindrance, otherwise than is provided in this act, any law to the contrary notwithstanding; and the Debtors of the said Bank, shall be allowed the said term of four years, for the payment of all debts due to the said Bank, by paying the

same in four equal annual instalments with six per cent interest to be secured to said Bank by four notes with good and approved security, payable in one, two, three and four years, from the date of the assignment to said assignees on the reception of the assets by said receiver or receivers as the case may be whether the debts be due or not, judgment or otherwise,

Sec 18. In the event that, that the Bank shall not accept the provisions of this act as herein provided, the bonds, and scrip in the hands of the Governor are to be retained as herein provided; And the Governor in the final settlement of the affairs of said Bank, shall assign to the Bank, the amount of two hundred and five thousand dollars as is herein provided.

Sec 19. The officers of said Bank in making the assignment of the effects, moneys &c provided for in this act, shall cause to be made copies to be executed, one to be retained by themselves, and to be delivered, to the assignees, and one to be transmitted to the Governor to be filed in the office of the Secretary of State, to be filed and preserved by him, also a tabular statement under oath of the debts and credits of said Bank — .

This act to take effect, and be in force from and after its passage.

Approved February 28th 1845-

Exhibit
(D)

Bank of Illinois

Shawneetown 19th March 1845

Whereas an act of the Legislature of the State of Illinois

at its last session was enacted entitled "an act supplemental to an act to reduce the public debt one million of dollars and put the Bank of Illinois into liquidation," and which was duly approved by the Council of Revision on the 28th day of February 1845. It is ordered that the terms and provisions of said act be accepted, and that the President and Cashier of said Bank within thirty days from this date, under the corporate seal of said Bank, assign all its effects real and personal of every kind and description to assignees according to the terms and provisions, and restrictions of said act, and that on the making of the same, the said President and Cashier deliver over to said assignees as far as the same is deliverable, all the money, Books, notes, Bills of exchange papers, choses in action, debts, title papers, and personal property of the said Bank, and that the said President and Cashier be invested with full power to do, whatever they can, in the consummation of the provisions of said act, according to its true intent and meaning.

A true copy from the Minute Book
of the Board of Directors of the Bank of
Illinois.

John Dilled Cashier.

Copy of agreement Bank of Illinois
Assignment of personal estate to J. S. Caldwell and
C. J. Ryan —
This agreement made this 10th of April 1845 between

(Exhibit
(6))

the President Directors and Company of the Bank of Illinois of the first part, and Albert B Caldwell of Shawneetown and C F Ryan of Lawrenceville of the second part witnesseth,

That whereas by the provisions of an act entitled "An Act supplemental to an Act to reduce the public debt one million of dollars, and put the Bank of Illinois into liquidation" approved February 28th 1845 it is provided that in case the said Bank of Illinois shall accept the provisions of said Act, the said Bank shall within thirty days after said acceptance, make an assignment of all the effects of said Bank both real and personal, of every kind and description to assignees in said act named, and the personal estate, rights and credits, and debts of every kind due to said Bank at Shawneetown and Branch at Lawrenceville, shall be assigned to the said Albert B Caldwell and C F Ryan, and whereas the President and Directors of said Bank of Illinois, by an act and order of the Board of Directors thereof, duly tested by the corporate seal thereof, which act and order is hereto annexed and referred to as part of this instrument, did on the 19th day of March 1845 duly accept the provisions of said Act, according to the requirements thereof, and did thereby authorize and empower James Dunlap President of said Bank and John Diddall Cashier thereof, within thirty days after the date of said order to make the transfer and assignment of the effects of the said Bank to the said assignees under the corporate seal of said Bank.

Now therefore in consideration of the premises the said President
 Directors and Company of the Bank of Illinois do hereby
 transfer and assign unto Albert J Caldwell and C. Z Ryan
 all the personal estate, rights and credits, notes, Bonds, judgments
 and debts of every kind due to said Bank at Phasoretown,
 and to the Branch of said Bank at Lawrenceville to have
 and to hold the said articles of personal property, unto the
 said Albert J Caldwell and C. Z Ryan and the survivor of
 them, and their successors in office, as assignees of said Bank
 of Illinois forever.



In testimony whereof the said President,
 Directors and Company of the Bank of Illinois
 have hereto affixed, their corporate seal
 and executed this conveyance by the signa-
 -tures and seals of the President, and Cashier
 of said Bank on the day and year
 first above written.

James Dunlap Pres Seal
 John Diddall Cash Seal

Exhibit
 (3)

An Act for the relief of the assignees of the Bank of Illinois
 and to extend the time for the liquidation of the affairs of said
 Bank.
 Sect 1. Be it enacted by the People of the State of Illinois

represented in the General Assembly That the time for the liquidation of the affairs of said Bank pursuant to the provisions of "an act supplemental to an act to reduce the public debt one million of dollars and to put the Bank of Illinois into liquidation" in force February 28th 1845 be and the same is hereby extended to the first day of January A.D. 1851.

Sec 2. That on all debts, dues and causes of action that have hitherto accrued to the President Directors and Company of said Bank the assignees of said Bank or their successors in office, shall have power, and authority to sue for and recover the same, in their own names, in manner and form following, that is to say Albert J Caldwell and Ebenezer F Bryan, and their successors in office shall have such power and authority touching such debts dues and causes of action, as have accrued to or been contracted with said Bank at Springfield or Lawrenceville; and Samuel Dunlap, and David A Smith as successors of John J Gardin deceased, and their successors in office, shall have such power, and authority touching such debts, dues and causes of action, as have accrued to, or been contracted with said Bank at Dalton, Jackson or Eskin.

And that all of said assignees, and their successors in office shall have power jointly to sue in their own proper names in ejectment, or in replevin, for the recovery of or establishment of title to any real estate, that may pertain to the execution of their trusts in the premises. —

Sect 3. That all actions at law or suits in chancery that have hitherto been instituted, in any of the Courts of this State, by the said President, Directors and Company of said Bank, or in their names, or in the names of said assignees as aforesaid, to the use of their assignees as aforesaid, shall be maintained, in the names of said assignees or their successors in office, with reference to their relation and respective rights, as defined in Section two of this Act; Provided nevertheless that persons now indebted to the said Bank of Illinois, or the assignees thereof, shall be allowed and permitted to pay all such with the certificates of the said Bank.

Sect 4. This Act be considered and treated as a public Act, and that it be in force, from and after its passage.

Approved February 10th 1849

(Resubstituted)
 (C)

An Act to regulate the interest of money —

Sect 1. Be it enacted by the People of the State of Illinois represented in the General Assembly, That the rate of interest, upon the loan or forbearance of any money, goods or things in action, shall continue to be, six dollars upon one hundred dollars, for one year, and after that, rate for a greater or less sum, or for a longer or shorter time; Provided that when the Parties expressly agree upon an amount

of interest, not exceeding the rate of twelve per centum per annum, it shall be legal, anything this section to the contrary notwithstanding, and the several courts in this State are hereby required to give judgment accordingly.

Sec 2. No person or corporation shall directly or indirectly accept or receive in money, goods, discounts or things in action, or in any other way, any greater sum, or greater value for the loan or forbearance or discount of any money, goods, or things in action, than as above described.

And on the 25th day of April 1853 the Defendant filed the following demurrers to Plaintiffs amended complaint, which demurrer is in the words and figures following =

Demurrers;

Ebenezer J. Bryan & J. Attchick Oliver J. Parlandingham	} In the Vanderburgh Circuit Court April Term 1853
---	--

The Defendant demurs to the Plaintiffs complaint for the following causes, viz;

1st. The Legislative Council and House of Representatives of the Illinois Territory had no power to charter any Bank for any purpose.

2nd. As to the first note mentioned in said complaint the said Bank had no rights or authority to receive or contract for eight per cent interest thereon, and said note is therefore void.

3rd. The said Exhibit "C" filed with the complaint

shows that the power to sue was vested in two persons and that there could be no survivorship, and that exhibit, together with the Exhibit "F" filed with said complaint show that the power of the said assigned to collect debts or in any way manage or control the business of said Bank, in their own names or otherwise ceased on the first day of January 1851 prior to the commencement of this suit.

4th. It does not appear that the stockholders or the Directors or any other person ever acted upon or accepted the Act of the Legislature, a copy of which is filed by the Plaintiff marked Exhibit No 2. Therefore the Defendant alleges that there was no corporate body, known as the President Directors and Company of the Bank of Illinois, capable of contracting at the time said two notes were given.

Jones & B by the
Attorney for Defendant

Agreement }

At the time of filing the demurrer the Parties filed the following agreement in writing, viz;

Peizer & Ryan }
 Oliver (Wanlandingham) } In the Vanderburgh
 Circuit Court
 April Term 1853

It is hereby agreed by the Parties to this suit, that Section 21 of Article 8 of the Constitution of Illinois adopted in the year 1818 shall be considered as being before the Court in the same manner as if the same had

been incorporated into the Plaintiffs Complaint, or properly set forth in an answer of Defendant, and that said Section shall be treated, and considered as a part of the Record on the hearing the demurrer filed by the Defendant to said complaint, and it is further agreed that said Section of said Constitution of the State of Illinois is in these words; Sect 21: That there shall be no other Banks or monied institutions in this State, but those already provided by Law, except a State Bank, and its Branches, which may be established and regulated by the General Assembly of the State as they may think proper.

Baker & Garrin Attys for Plaintiff
Jones & Blythe for Defendant

It is also agreed that an Act of the General Assembly of the State of Illinois entitled an Act to put the Bank of Illinois into liquidation" approved February 25th 1843 shall be treated and considered in the same manner as said Section of the Constitution of the State of Illinois is to be treated by the terms of the foregoing agreement

Baker & Garrin Attys for Plaintiff
Jones & Blythe for Defendant

The Act referred to in said agreement is as follows
An Act to put the Bank of Illinois into liquidation.

Sect 1st. Be it enacted by the People of the State of

Charters of
Bank of Illinois
facts supplement
any thereto
repealed

Illinois represented in the General Assembly, That an Act entitled "An Act to incorporate the President, Directors and Company of the Bank of Illinois at Hannettown," Approved December twenty eighth, one thousand, eight hundred and sixteen. Also the "Act to extend for a limited time the Charter of the Bank of Illinois at Hannettown" approved February twelfth one thousand eight hundred and thirty five; Also an Act supplemental to an Act entitled "An Act to incorporate the President, Directors and Company of the Bank of Illinois at Hannettown, Approved February twenty eighth, one thousand eight hundred and thirty seven, be and the same are hereby repealed; And the estate of the said Bank real and personal, shall not vest, but shall vest in three Commissioners to be appointed, in the manner hereinafter provided, and all liabilities of said Bank to creditors, shall henceforth attach to said Commissioners, and all debts due, or liabilities incurred to said Bank, shall be deemed to be due and performable to said Commissioners

estate and
property of
Bank not to
vest, but to be
vested in
Commissioners

Governor to
appoint three
Commissioners

Sec 2. That the Governor by and with the advice and consent of the Senate, shall appoint three Commissioners who shall have the power, and perform the duties, hereinafter required of them; and to be called the Commissioners of the Bank of Illinois; and who shall be commissioned by the Governor: the said Commissioners shall continue in office for the term of two years, unless sooner removed by the Governor

for good cause to be communicated to the next Session of
of the General Assembly: And the said Commissioners
shall receive the sum of three dollars per day for their
services; the number of days to be ascertained by affidavit
of said Commissioners, and allowed by the Governor,
§ 23. The said Commissioners, before they enter upon
the discharge of the duties of their office, shall take and
subscribe the following oath or affirmation: I do solemnly
swear (or affirm) that I am in no wise interested in
the Bank of Illinois at Hannington, either as creditor
debtor or stockholder, and that I will faithfully and truly
perform all the duties of the Office of Bank Commissioner
of the Bank of Illinois, according to law, and according to
the best of my ability", which affidavit or affirmation in
writing, shall be filed with the Secretary of State, and said
Commissioners, shall also be required, before they enter upon
the duties of the respective offices, each to enter into Bond
to the Governor of the State, and to his successors in office,
for the use of any persons now, or who may hereafter become
interested, in the sum of fifty thousand dollars, with good
security, to be approved by the Governor, and some two Justices
of the Supreme Court, and to be filed in the Office of the
Secretary of State; the said Bonds shall be conditionally
for the faithful performance of duty by the said Commissioners
respectively and to render a just and true account of their
actings and doings, in their said offices, and to pay over

Compensation}

Commissioners }
to take oaths }

And to give Bond }

all monies which may appear to be due to any person or persons interested in said Bank as creditors, stockholders or otherwise.

Duty of Commissioners Sec 4. The said Commissioners or either of them are hereby required, immediately, after they shall have been qualified as aforesaid to proceed to Shannectown, and to any other place, where the said Bank has a Branch Bank located, and shall then and there take possession of the banking house, of said Bank or branches; and also of all the goods, chattels, title papers, creditors effects, cash and bank bills belonging to said Bank, wherever the same may be found.

Their power and authority Sec 5. The said Commissioners or either of them if obstructed in the execution of the powers vested in them by virtue of this Act, shall have authority to call upon the Sheriff, Coroner, or any Constable of the proper county, who is hereby required to assist said Commissioners or Commissioners, and to call to his aid, the power of the County, and if any officer or agent of said Bank or any other person or persons, shall willfully resist, hinder, or in anywise obstruct the said Commissioners or Commissioners, or any other person or persons, called to his or their aid as aforesaid in the performance of any of the duties imposed upon them by this Act, or shall embezzle, secrete or in any manner remove any of the books, papers or funds of said Bank, in order to place

Penalty for obstructing Commissioners in their duty
 Commissioners may swear witnesses
 Send for persons papers &c

the same beyond the reach of said Commissioners, he or they shall be imprisoned in the penitentiary for a term not exceeding ten years.

§ 6. The said Commissioners shall have power to inquire into the State and condition of said Bank by summoning, attaching and swearing witnesses, and by sending for persons and papers, and requiring the production of the same by attachment: and the said Commissioners shall sue and be sued by the name and style of the Commissioners of the Bank of Illinois; and service of process on either one of them shall be sufficient service, and they shall proceed to collect the debts due said Bank, and sell the Real estate belonging thereto, under such restrictions and regulations, as are hereafter provided for, and the debtors to said Bank, shall have a right to renew their notes to said Commissioners, whether the same shall be reduced to judgment or otherwise, by paying one fifth part of the sum due, or owing, with interest and costs if any, and giving good security for the residue, every seven months.

Shall take an account of the due to Creditors

§ 7. The said Commissioners shall proceed to take an account of all the gold and silver on hand, and of the amount due to note holders and depositors, and to other creditors, except Stockholders, on account of Stock and shall as soon thereafter as the Certificates, herein-after mentioned can be engraved, and prepared, proceed

Pay out the specie pro rata to creditors } to pay out specie to such creditors pro rata at the counter of the principal Bank, as fast as such demands shall be presented for payment, and shall issue certificates, not bearing interest for the residue of the debts, upon delivery of the notes presented as a receipt against such other demand; the said Commissioners shall from time

to time, as they may collect specie funds declare a dividend, payable on said certificates, and shall give notice thereof, in the State paper: the certificate aforesaid shall be received by said Commissioners in payment of any debts due the said Bank, and in payment for any real estate sold, by said Commissioners, or for the redemption of any land sold under execution, at the suit of the said Bank, or said Commissioners, and shall entitle the holder thereof to receive such dividend as aforesaid.

Real estate not to be sold for less than $\frac{2}{3}$ its appraised value } Sect 8. The said Commissioners, in selling the real estate of said Bank, shall not sell any of the same, for less than two thirds of its value, to be ascertained by the appraisal of three householders, under oath to be appointed, by the judge of the Circuit Court, where such real estate may be situated; nor shall any of the real estate of said Bank be sold on execution or otherwise, for less than two thirds of its value, to be ascertained in like manner.

Sect 9. The said Commissioners shall not sell or otherwise dispose of any State indebtedness of the State of Illinois,

which may come into their possession until they have applied all the assets of the Bank which can be made available, for the payment of debts, but shall hold and retain the said indebtedness for the purpose of indemnifying the State, for the stock she now holds, in said Bank. Provided that nothing in this Section contained, shall be so construed, as to prevent the State, from obtaining her full dividend, in proportion to the stock, she now holds, at the final settlement of said Bank; and provided also that said Commissioners, shall not sell or dispose of the evidences of State indebtedness, below their par value.

Commissioners }
to report }
monthly to the }
Governor }
May appoint }
a Clerk }
} Sect 10. The said Commissioners shall proceed with all possible despatch, to make a final settlement of the affairs of said Bank, and shall make monthly reports of their proceedings to the Governor, and the same shall be published in the paper, published by the public printer, without charge; and said Commissioners shall have power to appoint a Clerk to their Board, prescribe his duties, and fix his compensation, whenever the public good, may in their opinion, demand such appointment.

Commissioners }
may retain }
\$10,000 to defray }
expenses }
} Sect 11. The said Commissioners are hereby authorized to retain the sum of ten thousand dollars of Cash of said Bank to pay taxes, to pay taxes on real-estate, and to pay other necessary expenses of winding up the said Bank; and the per diem of said Commissioners and Clerk, shall be considered a part of said necessary expenses.

Penalty for }
embezzling }
money } Sect 12. If any of the said Commissioners shall
embezzle, any of the effects of said Banks, real or
personal or shall render a false account of their pro-
ceeding, or shall refuse to pay over moneys in their
hands, to any person or persons, intitled to the same,
such Commissioners, shall be adjudged to be guilty of
felony, and shall upon conviction, be punished by con-
finement in the penitentiary, for any term not ex-
ceeding two years.

Governor }
may fill }
vacancies } Sect 13. The Governor may fill any vacancy which
may happen in the Board of Commissioners aforesaid,
by death resignation, or removal.

Attorney General }
Circuit Attorneys }
Sect to render ser- }
vices free of }
charge } Sect 14. The Attorney General, Circuit Attorneys,
and Clerks of Courts, and officers charged with the
execution of process, shall upon request of said Commis-
sioners or any one of them, render their services, in all
cases arising under this Act, without charge to the
State, as a part of their official duty; any law to the
contrary, notwithstanding.

Sect 15. This Act to be in force from and after the
third day of March next.

Approved February 25th 1843.

And on the 2nd day of May 1853, this cause being
submitted to the Court, on the amended complaint,
Exhibits, Demurrer &c the Court made the following
order, viz;

order }
 sustaining } Ebenezer R. Ryan
 Demurrer } & For attach'd
 Oliver C. Vanlandingham }

And now here the Court being sufficiently advised, it is considered that the Plaintiff's complaint is not sufficient in law to maintain his action aforesaid, against the Defendant, and it is therefore further considered, that the Plaintiff take nothing by his suit, and that the Defendant recover of the Plaintiff his costs, and the Plaintiff prays an appeal to the Supreme Court, which is granted, and it is ordered, that the Plaintiff give an appeal Bond in the sum of one hundred dollars, with Conrad Baker and Thomas C. Garin, as his sureties, within sixty days from the last day of this term. —

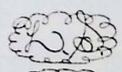
Appeal }
 Bond }

Know all men by these presents that we, Conrad Baker and Thomas C. Garin, are held and firmly bound unto Oliver C. Vanlandingham, in the penal sum of one hundred dollars, for the payment whereof, we bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents,

Whereas at the April Term of the Vanderburgh Circuit Court in the year of our Lord, one thousand eight hundred, and fifty three, said Court rendered

a judgment in a certain action wherein Ebenezer
 P. Ryan was Plaintiff, and the said Oliver Le
 Vanlandingham was Defendant, which judgment
 was rendered against the said Plaintiff, and in favor
 of the said Defendant, and thereupon on motion of
 said Plaintiff, said Court granted said Plaintiff an
 appeal to the Supreme Court from said judgment, and
 required this Bond to be filed, within sixty days from
 the last day of the said term, of said Circuit Court;

Now therefore the condition of this obligation is such,
 that if the said Appellant, shall duly prosecute said
 appeal, and abide by and pay the judgment, and all
 costs, which may be rendered or affirmed against him
 by said Supreme Court in said cause, then this obliga-
 tion shall be null and void, otherwise the same
 shall be, and remain in full force and virtue,

Conrad Baker 
 Thomas E. Garvin 

Filed and approved June 2nd 1853
 Jacob Ninkenheimer Clk

State of Indiana }
Vanderburgh County } D.S.

I Jacob Runkenheimer Clerk of
the Vanderburgh Circuit Court do hereby certify
that the foregoing, is a full, true and complete transcript
of the Record, proceedings, and judgment, had in the above
entitled cause at the April term ~~of~~ 1853 of said
Court.



In witness of which I hereunto
set my name, and affix the Seal
of the said Court at Evansville
this 3rd day of June A.D. 1853
Jacob Runkenheimer
Clerk W. C. C.

"Upon which is endorsed an assignment of errors
as follows";

Assignment
of errors }

Ebenezer P. Ryan

Oliver W. Vanlandingham

In the Supreme Court
of the State of Indiana
Term ~~of~~ 1853

Appeal from the Vanderburgh Circuit Court

The said Appellant by J. Baker his
Attorney comes, and for assignment of error says that
the Vanderburgh Circuit Court erred, in sustaining the
Defendants demurrer, to the Plaintiffs complaint, when
by the law of the land, said demurrer should have been

overruled, wherefore the Appellant prays that
the said judgment may be reversed.

C. Baker Attorney for Appellant

founder in }
error }

the Appellee by his Attorney, and filed in the Offices
Office of the Supreme Court, his founder in error, which
founder is in the words and figures following to wit;
And the Defendant by James H. Jones his Attorney comes
and says the said Circuit Court did not err in sustain-
ing the said demurrer, as the Plaintiff has above alleged
wherefore the Defendant prays that said judgment
may be affirmed.

Gas H. Jones Attorney for Defendant.

Continued }

And afterwards to wit at a Court began and
held on the 22nd of May 1853 and continued from day
to day until November 26th 1853 at which time came the
Appellant by his Attorney and on his motion this cause
is ordered to be continued until the next term of this Court

Continued }

And afterwards to wit at a Court began and
held on the 28th of November 1853 and continued from
day to day until May 20th 1854 at which time came
the Appellant by his Attorney and on his motion, this
cause is ordered to be continued until the next term of
this Court.

Continued }

And afterwards to wit at a Court began and
held on the 22nd of May 1854 and continued from day
to day until November 25th 1854 at which time came
the Appellant by his Attorney and on his motion this
cause is ordered to be continued until the next term of this Court.

Submissions}

And afterwards to wit at a Court began and held on the 27th of November 1854 and continued from day to day, until December 1st 1854 at which time came the Parties by their Attorneys, and the assignment of errors and answers thereto having been filed, submit this cause to the Court, but the Court not being sufficiently advised of the premises, take time until the next term of this Court to advise thereon.

Continued}

And afterwards to wit at a Court began and held on the 27th of November 1854 and continued from day to day until May 26th 1855 at which time came the Parties by their Attorneys but the Court not being sufficiently advised of the premises, take time until the next term of this Court to advise thereon.

Continued}

And afterwards to wit at a Court began and held on the 28th of May 1855 and continued from day to day until July 14th 1855 at which time came the Parties by their Attorneys, but the Court not being sufficiently advised of the premises, take time until the next term of this Court to advise thereon.

Continued}

And afterwards to wit at a Court began and held on the 26th of November 1855 and continued from day to day until December 27th 1855 at which time came the Parties by their Attorneys, but the Court not being sufficiently advised of the premises take time to advise thereon.

And afterwards to wit at a Court began and held

on the 26th day of May 1856, and on the second day of the term, came the Parties by their Attorneys, and the Court being now sufficiently advised of the premises give the following opinion and judgment pronounced by Judge Cookin.

Opinion }

This action was brought by Ryan as assignee of the Bank of Illinois, against Wanland and his wife as the makers of two promissory notes, each for the sum of 2000 dollars, payable to the President, Directors and Company of said Bank, dated at Shawneetown, one March 5th 1841 and the other May 5th 1841, each due six months after date. The first note contains a stipulation for the payment of interest, at the rate of eight per cent per annum after maturity; the second for the payment of six per cent after maturity.

The complaint contains several recitations, of the Territorial, and State governments of Illinois. The first is, the act of incorporation of the Bank of Illinois, passed by the Territorial Legislature, approved December 28th 1816, which was to expire January 1st 1837; the second an act passed by the State Legislature approved February 12th 1835, continuing the act of incorporation for twenty years from January 1st 1837. On the 25th of February 1843 an act was passed for putting the Bank into liquidation, and an act supplemental thereto, was approved February 28th 1845. The incorporation was required to

accept or reject the provisions of the latter act within thirty days; and within that time it was accepted by a resolution of the Board of Directors, It required the Bank to make an assignment of all its effects, real and personal to Caldwell, Ryan (the Plaintiff) Kardin and Dunlap, The real estate, was to be assigned to all the assignees jointly: the personal estate, rights, credits, and debts due to the Bank at Hannettown, and the Bank at Lawrenceville, were required to be assigned to Caldwell and Ryan, and those due to the Branches at Jacksonville, Altoon & Pekin, to Kardin and Dunlap, On the 10th of April 1845, the Bank made an assignment pursuant to the requirements of this Act to Caldwell and Ryan of the personal effects of the Bank at Hannettown, and delivered to them the notes set forth in the complaint, The assignment is to them, and the survivor of them.

On the 10th of February 1849, an Act was passed enlarging the time for ~~the~~ closing up the affairs of the corporation, until January 1st 1851, after the passage of this act and before the commencement of the suit, Caldwell the Co-assignee of Ryan died. The several acts and the assignment, are made Exhibits and referred to by proper averments; and there are other Acts of the Legislature of Illinois, annexed to the complaint, and embodied in the Record by agreement, which will be noticed hereafter, The Defendant demurred to the complaint;

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the Circuit Court sustained the demurrer, and gave judgment for the Defendant. The grounds of demurrer are as follows:

First: That the Territorial Legislature had no power to charter a Bank.

We do not think it necessary to decide whether the Territorial government, had or had not, power to charter a Bank, a Section of the Constitution of Illinois, is made a part of the Record, which is as follows "There shall be no other Banks, or monied institutions in this State, but those already provided by law, except a State Bank and its branches which may be established, and regulated by the General Assembly of the State as they may think proper". This was adopted in 1818, and clearly recognized the legal existence of the corporation. Its existence has also been fully recognized by the Legislature of that State, by the various enactments, embodied in the Record, and especially by the act of 1835, extending its charter for twenty years.

But the Appellee insists that the Act of 1835 was inoperative for two reasons; 1st, Because it is not averred that the Corporation, accepted the act; and 2nd Because if accepted it violated the Section of the Constitution above quoted the extending of the Charter, being it is insisted, equivalent to the granting of a new one.

The first objection is answered by an estoppel, arising out of the contract. If the Corporation could

have had a constitutional existence, at the time the notes were executed, the Defendant having contracted with it as such, cannot be allowed to deny it. *John v The Farmers Bank* 2 B. Jackf 367.

On the other point: It would be a delicate matter for this court to declare the acts of a sister State invalid, on the ground of a supposed conflict with the Constitution of that State; and specially so, when the Legislature of that State has by repeated enactments, recognized them as valid. It would require a case free from doubt to induce us so to declare. The language of the Section we think does not justify the conclusion, which the Appellee draws from it. It declares that, there shall be no other banks &c, but those already provided by law, except w^o State Bank &c. We have already said this Section recognized the then existence of the Corporation, and we think such as were then in being, were exempted from the prohibition contained in the Section, and that they might be continued during the pleasure of the Legislature. We do not find that the constitutional question here raised has been passed upon by the Supreme Court of Illinois, but the existence of the Bank has been recognized in repeated decisions of that Court. *Bryan v Jones* 15 Ill 1; *Richeson v Bryan* Id 13.

Our conclusion upon the first is an answer to the fourth cause of demurrer, which is, that it does not appear by

the complaint that the Bank accepted the act of retention,

The second cause of demurrer applies to one of the notes only, that which stipulates for the payment of eight per cent interest after due, which it is said makes the note usurious and void.

A general law was in force in Illinois passed in 1833 limiting the rate of interest, to 12 per cent by special contract, but it cannot be regarded as any part of the Charter of the Bank, nor as conferring any rights on that institution, which must be governed by the law of its existence, and by those acts, which in terms apply to it. The Act extending the Charter authorizes interest to be taken on loans for six months or under, at the rate of six per cent per annum, and on loans over six months at the rate of eight per cent per annum.

The record contains an Act of the Legislature of Illinois adopting the common law. If therefore the contract was usurious it is void. *Fowler & Throckmorton v. Black* 326. We think the agreement of the parties apparent from the language employed, was, that the loan was for six months; that if paid at maturity no interest was demandable; but if the borrower by his own default of payment, retented the loan beyond that time, he should pay interest, at the rate of eight per cent per annum. This brings the stipulation within the provisions of the Charter, and renders the contract valid.

The third cause of demurrer denies the right of Ryan

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to maintain this action on two grounds;
II. Because the power to maintain suits by the assignees
was conferred on Caldwell and Ryan jointly; that
Caldwell being dead no right of action survived to Ryan
and III. Because the powers conferred on the assignees
expired by limitation on the first of January 1851,
which was before this suit was commenced.

In considering these objections the first inquiry is, what
rule of construction is to be applied to the Statutes enacted
for the purpose of winding up the affairs of this corporation.
The Appellee regards them in the light of Acts conferring
certain limited powers, like acts of incorporation, which
imply a negative of all others; and if this were the true
view of them, his conclusions, would perhaps be unavoidable;
but we think it is not. They are remedial Statutes,
enacted for the purpose, not of conferring powers upon a
corporation, but of compelling a moribund institution,
which had failed to answer the end of its creation, to pay
its debts, and wind up its affairs. The first of the series,
passed in 1843, took from the Corporation all its banking
powers, but continued its corporate existence for four
years, for the purpose above mentioned. It declared
the Charter repealed at the end of that time. The Bank
it seems, did not accept the provisions of that act. The
second was passed in 1845. It required the Bank, to
accept it within thirty days: if accepted an assignment

was to be made to certain persons named of all its effects, real and personal, who were to reduce them to possession, redeem the issues of the Bank by pro rata payments, from time to time, and settle up its affairs. If not accepted suit was to be instituted against the corporation in the name of the State, a receiver was to be appointed who was to perform the same duties prescribed to the assignees. In the performance of these duties, the public had a large interest. They were not essentially different from those committed to administrators of the estates of decedents.

The rules of construction applicable to legislation, on subjects in which the public at large are interested are essentially different from those which apply to private grants to individuals or artificial persons, of powers and privileges conferred to be exercised with special reference to their own advantage. The former are to be expounded liberally and beneficially to effectuate the purposes for which they were enacted. The latter are to be construed strictly as against the grantees. *Bradley v. New York and New Haven Railroad Company* 21 Conn. 294. We shall perceive the frequent application of this rule as we proceed. With this view of the nature of these acts we are prepared to examine their details, as far as may be necessary in determining the two questions arising under the third cause of demurrer.

II. Can Bryan, Caldwell being dead maintain this action?

The assignment was made to Caldwell and Ryan and the survivor of them, and the question is, was it authorized to be so made? The act does not prescribe any particular form of assignment. It provides in general terms that all the effects of the Bank, shall be transferred to four assignees. It then requires the real estate to be conveyed to all the assignees jointly, and that the personal effects of the Bank at Lawrence town, and of the Branch at Lawrenceville, shall be assigned to Caldwell and Ryan, and of the other Branches to the two other assignees; but does not require that it shall be done jointly, or with or without the right of survivorship. We think the assignment made by the Bank with the right of survivorship was authorized by the act, there being no requirement upon the corporation to make it otherwise. It is true it contains a provision for filling vacancies, but that the vacancy occasioned by Caldwell's death, was not filled did not render the assignment inoperative. Perhaps had the question arisen solely upon the appointment contained in the act, independent of the assignment, it might have required a different conclusion. The remaining question in the case is, whether the right to sue, had expired by efflux of time, when this action was commenced.

The 17th Section of the act of February 28th 1845 is as follows:

"The assignees shall have four years from the passage

of this act to make final settlement of the affairs of the Bank, without hindrance, otherwise than is provided in this act, any law to the contrary notwithstanding, and the Debtors of the said Bank, shall be allowed the said term of four years, for the payment of all debts, due to the said Bank by paying the same in four equal annual instalments with six per cent interest to be secured to said Bank by four notes, with good approved security payable in one, two, three and four years, from the date of the assignment to said assignees, or the reception of the assets by said receiver or receivers, as the case may be, whether the debts be due or not, judgment or otherwise."

The act of February 10th 1849 is intitled "An Act for the relief of the assignees of the Bank of Illinois, and to extend the time for the liquidation of the affairs of said Bank". It provides that the time for the liquidation of the affairs of said Bank, pursuant to the provisions of an act (reciting the title of the act of 1845) be and the same is hereby extended to the first day of January 1851".

It is evident that the period of four years for making a final settlement of the affairs of the Bank as provided in the above 17th Section was not designed as a limitation of the power of the assignees to sue within that time only. The period of four years is from the passage of the act, February 28th 1845, and it took effect from its passage. The Bank had thirty days in which to accept or reject it;

and if accepted the assignment was to be made within thirty days after acceptance. If rejected the business was to go into the hands of a receiver. The assignees or receiver according to the fact, were required to give Debtors of the Bank, four years from the date of the assignment by the former, or the receipt of the assets by the latter for the payment of their debts, on executing notes with surety, payable in four yearly instalments. The last instalment could not become due until some time after four years from the passage of the act. Consequently if the four years here mentioned, should be regarded as a limitation of the power to sue, within that time, a fourth part of the debts due the Bank, were liable to be lost; such a construction is too absurd to be tolerated; and yet this act is as explicit as to time as that of 1849.

The latter act extends the time for liquidation, pursuant to the provisions of the act of 1845 to January 1st 1851. This part of the act contains no negative words. Are we authorized to add the words "and not after" by implication?

In the Hartford and New Haven Railroad Company v Kennedy 12 Conn 499, it was said that where a liberal construction is necessary to carry into effect the object of a remedial statute, although it be introductory of a new law, no negative ought in general to be implied. It is a general rule that in the construction of statutes of this kind, the time in which an act is to be done, is not essential, unless

made so by the act in proper terms. See *Ex p Sparrow* 2 Strange 1123, in which case, the grounds on which the court held an act valid, done out of time, although it was under a new statute was, 1st. That the public were interested to have it done; 2nd. Because the act contained no negative words and 3rd. Because the parties to be benefited by the act had no power to do it themselves; all which apply with much force to the present case. In reviewing this case Lord Mansfield in *Ex p Goodale* 1 Burr 447 said; There is a known distinction between circumstances which are of the essence of a thing required to be done by act of Parliament, and clauses merely directory, the present time in many cases is not of the essence. In *Ex p Hayler* 1 Burr 542 the time for the performance of an act was held essential. Also in *Thames Manufacturing Company v Lathrop* 7 Conn 555 but in those cases it was held essential upon the same principle, upon which it is held to be not essential in cases like the one under review; that is because the rights of the public are to be affected by the act. In one case, those to be affected were entitled to have the act done at the time, otherwise they were injured. In the other case they were entitled to have it done, whether done within the time or not, otherwise they were injured. See also as to the construction of remedial statutes, *Richards v The New Albany & Salem Rail-road Company* at the present term.

There is a view of the case which comprehends both franchises

State of Indiana &c.

I William R Stewart Chief
Justice of the Supreme Court of said State, certify
that William B Beach by whom the foregoing
Record is made and attested, is the Clerk of said Court
and that his said attestation is in due form.

Given under my hand this
twenty ninth day of July

1856

William R. Stewart
Chief Justice.

forfeiture and seizure of its franchises; The State Bank
 & The State Supra. But admitting that the corporation
 was extinct that did not extinguish the debts due
 to it, as has been said, if provision was made to
 prevent it, and when assigned, they had the same
 force, in the hands of the assignees, as the rights
 and credits of deceased persons, in the hands of
 their representatives, The doctrine of reversion and
 relinquishment arise from necessity, The death
 of a corporation does not annihilate its property,
 and there being no heirs, it reverts to the last owner,
 because it can go nowhere else, So when its credits
 fall from its lifeless hands, they cease for the want
 of a payee or obligee, The State & The State Bank
supra. But here a payee has been provided, and
 the consequence, which would otherwise have ensued
 is averted:

The one of the opinion that the complaint was suf-
 ficient, and that the demurrer to it, should have
 been overruled,

It is therefore considered by the Court that
 the judgment of the lower Court be in all things
 reversed at the cost of the Appellee, and that the
 cause be remanded to said lower Court, with
 directions to permit Defendant to answer.

All which is ordered to be certified to said Court

It is further considered by the Court
 that the Appellant recover of the Appellee the sum
 of dollars and cents for his
 costs and charges in this behalf expended.

State of Indiana ff.

I William B Beach
Clerk of the Supreme Court of said State
do certify that the foregoing seventy three pages
contain a full and complete copy of the Record
of said Court in the case of Bryan & Canland-
-ingham,



In witness whereof I here unto
subscribe my name and affix the
Seal of said Court at the City of
Indianapolis State of said
this twenty sixth day of July
A D 1856

Wm B Beach, C. C.
per Joseph P. Kuntzel Dep.

E. G. Ryan

4 } copy
3 } Bound.

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Indiana

Ryan

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